

## STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

## OFFICE OF THE GOVERNOR 1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331 FACSIMILE: 602-542-7601

July 7, 2008

The Honorable Jim Weiers Speaker of the House Arizona House of Representatives 1700 West Washington Phoenix, Arizona 85007

Re: House Bill 2389; Misconduct Involving Weapons; Means; Transportation

Dear Speaker Weiers:

Today I vetoed House Bill 2389, a bill that would have allowed individuals to hide weapons in their vehicles without a concealed weapons permit. Law enforcement requested that I veto this bill, and for good reason. House Bill 2389 would have added to the level of uncertainty and danger law enforcement officers who make traffic stops already face in the line of duty. It would also deprive officers of the ability to confiscate concealed weapons from individuals who ignore the concealed weapons laws in transit.

For these and other reasons, I have vetoed House Bill 2389.

Yours very truly,

Janet Napolitano

Governor

JN:LK/jm

cc: The Honorable Timothy S. Bee The Honorable John Kavanagh State of Arizona House of Representatives Forty-eighth Legislature Second Regular Session 2008

## **HOUSE BILL 2389**

AN ACT

AMENDING SECTIONS 13-1407, 13-3102 AND 13-3105, ARIZONA REVISED STATUTES; AMENDING SECTION 13-3112, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 269, SECTION 1; RELATING TO CRIME.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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Be it enacted by the Legislature of the State of Arizona:

Section. 1.Section 13-1407, Arizona Revised Statutes, is amended to read:

## 13-1407. <u>Defenses</u>

- A. It is a defense to a prosecution pursuant to sections 13-1404 and 13-1405 involving a minor if the act was done in furtherance of lawful medical practice.
- B. It is a defense to a prosecution pursuant to sections 13-1404 and 13-1405 in which the victim's lack of consent is based on incapacity to consent because the victim was fifteen, sixteen or seventeen years of age if at the time the defendant engaged in the conduct constituting the offense the defendant did not know and could not reasonably have known the age of the victim.
- C. It is a defense to a prosecution pursuant to section 13-1402, 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person who renders emergency care at the scene of an emergency occurrence, the act consisted of administering a recognized and lawful form of treatment that was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
- D. It is a defense to a prosecution pursuant to section 13-1404 or 13-1405 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to section 13-1406 that the defendant was the spouse of the victim at the time of commission of the act.
- E. It is a defense to a prosecution pursuant to section 13-1404 or 13-1410 that the defendant was not motivated by a sexual interest. It is a defense to a prosecution pursuant to section 13-1404 involving a victim under fifteen years of age that the defendant was not motivated by a sexual interest.
- F. It is a defense to a prosecution pursuant to section 13-1405 if the victim is fifteen, sixteen or seventeen years of age, the defendant is under nineteen TWENTY years of age or attending high school and is no more than twenty-four THIRTY-SIX months older than the victim and the conduct is consensual.

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Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read: 13-3102. Misconduct involving weapons: defenses: classification: definitions

- A. A person commits misconduct involving weapons by knowingly:
- 1. Carrying a deadly weapon without a permit pursuant to section 13-3112 except a pocket knife concealed on his person; or
- 2. Carrying a deadly weapon without a permit pursuant to section 13-3112 concealed within immediate control of any person in or on a means of transportation; or
- 3. 2. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or
- 4. 3. Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor; or
  - 4. POSSESSING AMMUNITION IF SUCH PERSON IS A PROHIBITED POSSESSOR; OR
- 5. Selling or transferring a deadly weapon to a prohibited possessor; or
  - 6. Defacing a deadly weapon; or
- 7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or
- 8. Using or possessing a deadly weapon during the commission of any felony offense included in chapter 34 of this title; or
- 9. Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or
- 10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event for temporary and secure storage of the weapon pursuant to section 13-3102.01; or
- 11. Unless specifically authorized by law, entering an election polling place on the day of any election carrying a deadly weapon; or
  - 12. Possessing a deadly weapon on school grounds; or
- 13. Unless specifically authorized by law, entering a nuclear or hydroelectric generating station carrying a deadly weapon on his person or within the immediate control of any person; or
- 14. Supplying, selling or giving possession or control of a firearm to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any felony; or
- 15. Using, possessing or exercising control over a deadly weapon in furtherance of any act of terrorism as defined in section 13-2301 or possessing or exercising control over a deadly weapon knowing or having reason to know that it will be used to facilitate any act of terrorism as defined in section 13-2301.

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- B. Subsection A, paragraph 1 of this section shall not apply to a person in his dwelling, on his business premises, IN OR ON A MEANS OF TRANSPORTATION, EXCLUDING ANY PUBLIC TRANSIT, or on real property owned,  $\frac{\partial P}{\partial t}$  leased OR RENTED by that person.
- C. Subsection A, paragraphs 1, 2,  $\frac{3}{2}$ , 7, 10, 11, 12 and 13 of this section shall not apply to:
- 1. A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or
- 2. A member of the military forces of the United States or of any state of the United States in the performance of official duties; or
- 3. A warden, deputy warden or correctional officer of the state department of corrections; or
- 4. A person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States.
- D. Subsection A, paragraphs  $\frac{3}{2}$  and 7 of this section shall not apply to:
- 1. The possessing, transporting, selling or transferring of weapons by a museum as a part of its collection or an educational institution for educational purposes or by an authorized employee of such museum or institution, if:
- (a) Such museum or institution is operated by the United States or this state or a political subdivision of this state, or by an organization described in 26 United States Code section 170(c) as a recipient of a charitable contribution; and
- (b) Reasonable precautions are taken with respect to theft or misuse of such material.
  - 2. The regular and lawful transporting as merchandise; or
- 3. Acquisition by a person by operation of law such as by gift, devise or descent or in a fiduciary capacity as a recipient of the property or former property of an insolvent, incapacitated or deceased person.
- E. Subsection A, paragraph 3—2 of this section shall not apply to the merchandise of an authorized manufacturer of or dealer in prohibited weapons, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer, a regularly constituted or appointed state, county or municipal police department or police officer, a detention facility, the military service of this or another state or the United States, a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.
- F. Subsection A, paragraph 1 of this section shall not apply to a weapon or weapons THAT ARE carried in ANY OF THE FOLLOWING:
- 1. A belt holster which MANNER WHERE ANY PORTION OF THE WEAPON OR A holster IN WHICH THE WEAPON IS CARRIED is wholly or partially visible. , or carried in

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- 2. A scabbard or case designed for carrying weapons which AND ANY PORTION OF THE WEAPON, scabbard or case is wholly or partially visible. or carried in
- 3. Luggage. Subsection A, paragraph 2 of this section shall not apply to a weapon or weapons carried in a case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, map pocket, trunk or glove compartment of a means of transportation.
- G. Subsection A, paragraph 10 of this section shall not apply to shooting ranges or shooting events, hunting areas or similar locations or activities.
- H. Subsection A, paragraph 3-2 of this section shall not apply to a weapon described in section 13-3101, subsection A, paragraph 7, subdivision (e), if such weapon is possessed for the purposes of preparing for, conducting or participating in lawful exhibitions, demonstrations, contests or athletic events involving the use of such weapon. Subsection A, paragraph 12 of this section shall not apply to a weapon if such weapon is possessed for the purposes of preparing for, conducting or participating in hunter or firearm safety courses.
- I. Subsection A, paragraph 12 of this section shall not apply to the possession of a:
- 1. Firearm that is not loaded and that is carried within a means of transportation under the control of an adult provided that if the adult leaves the means of transportation the firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.
- 2. Firearm for use on the school grounds in a program approved by a school.
- J. The operator of the establishment or the sponsor of the event or the employee of the operator or sponsor or the agent of the sponsor, including a public entity or public employee, is not liable for acts or omissions pursuant to subsection A, paragraph 10 of this section unless the operator, sponsor, employee or agent intended to cause injury or was grossly negligent.
- K. Misconduct involving weapons under subsection A, paragraph 9, 14 or 15 of this section is a class 3 felony. Misconduct involving weapons under subsection A, paragraph 2, 3, 4, 8 or 13 of this section is a class 4 felony. Misconduct involving weapons under subsection A, paragraph 12 of this section is a class 1 misdemeanor unless the violation occurs in connection with conduct which violates the provisions of section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 4, 5, 6 or 7 of this section is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, 2, 10 or 11 of this section is a class 1 misdemeanor.

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- L. For the purposes of this section:
- 1. "AMMUNITION" MEANS AMMUNITION, CARTRIDGE CASES, PRIMERS, BULLETS OR PROPELLANT POWDER DESIGNED FOR USE IN ANY FIREARM.
- 1. 2. "Public establishment" means a structure, vehicle or craft that is owned, leased or operated by this state or a political subdivision of this state.
- 2. 3. "Public event" means a specifically named or sponsored event of limited duration THAT IS either conducted by a public entity or conducted by a private entity with a permit or license granted by a public entity. Public event does not include an unsponsored gathering of people in a public place.
- 3. 4. "School" means a public or nonpublic kindergarten program, common school or high school.
  - 4. 5. "School grounds" means in, or on the grounds of, a school.
  - Sec. 3. Section 13-3105, Arizona Revised Statutes, is amended to read: 13-3105. <u>Forfeiture of weapons and explosives</u>
- A. Upon ON the conviction of any person for the A violation of any felony in this state in which a deadly weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed by such THE person, the court shall order the article forfeited and sold, destroyed or otherwise properly disposed.
- B. Upon ON the conviction of any person for the A violation of section 13-2904, subsection A, paragraph 6 or section 13-3102, subsection A, paragraph 1,  $\frac{2}{7}$ , 8 or 10, the court may order the forfeiture of the deadly weapon or dangerous instrument involved in the offense.
- C. If at any time the court finds pursuant to rule 11 of the Arizona rules of criminal procedure that a person who is charged with a violation of this title is incompetent, the court shall order that any deadly weapon, dangerous instrument or explosive used, displayed or unlawfully possessed by the person during the commission of the alleged offense be forfeited and sold, destroyed or otherwise properly disposed.
- Sec. 4. Section 13-3112, Arizona Revised Statutes, as amended by Laws 2008, chapter 269, section 1, is amended to read:
  - 13-3112. Concealed weapons: qualification: application: permit to carry: certificate of firearms proficiency: training program; program instructors: report: applicability: violation: classification
- A. The department of public safety shall issue a permit to carry a concealed weapon to a person who is qualified under this section. The person shall carry the permit at all times when the person is in actual possession of the concealed weapon and shall present the permit for inspection to any law enforcement officer on request.
- B. A person who fails to carry the permit at all times that the person is in actual possession of a concealed weapon may have the permit suspended. The department of public safety shall be notified of all violations of this section and shall immediately suspend the permit. The permittee shall

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present the permit to the law enforcement agency or the court. On notification of the presentation of the permit, the department shall restore the permit.

- C. The permit of a person who is arrested or indicted for an offense that would make the person unqualified under section 13-3101, subsection A, paragraph 6 or this section shall be immediately suspended and seized. The permit of a person who becomes unqualified on conviction of that offense shall be revoked. The permit shall be restored on presentation of documentation from the court if the permittee is found not guilty or the charges are dismissed. The permit shall be restored on presentation of documentation from the county attorney that the charges against the permittee were dropped or dismissed.
- D. A permittee who carries a concealed weapon and who fails to present a permit for inspection on the request of a law enforcement officer is guilty of a petty offense. A permittee shall not be convicted of a violation of this subsection if the permittee produces to the court a legible permit that is issued to the permittee and that was valid at the time the violation of this subsection occurred.
- E. The department of public safety shall issue a permit to an applicant who meets all of the following conditions:
  - 1. Is a resident of this state or a United States citizen.
  - 2. Is twenty-one years of age or older.
- 3. Is not under indictment for and has not been convicted in any jurisdiction of a felony unless that conviction has been expunged, set aside or vacated or the applicant's rights have been restored and the applicant is currently not a prohibited possessor under state or federal law.
- 4. Does not suffer from mental illness and has not been adjudicated mentally incompetent or committed to a mental institution.
  - 5. Is not unlawfully present in the United States.
- 6. Satisfactorily completes a firearms safety training program approved by the department of public safety pursuant to subsection 0 of this section. This paragraph does not apply to:
- (a) A person who is an active duty Arizona peace officer standards and training board certified or federally credentialed peace officer or who is honorably retired as a federal, state or local peace officer with a minimum of ten years of service.
- (b) A person who is an active duty county detention officer and who has been weapons certified by the officer's employing agency.
- (c) A person who is issued a certificate of firearms proficiency pursuant to subsection  $\boldsymbol{X}$  of this section.
- F. The application shall be completed on a form prescribed by the department of public safety. The form shall not require the applicant to disclose the type of firearm for which a permit is sought. The applicant shall attest under penalty of perjury that all of the statements made by the applicant are true. The applicant shall submit the application to the

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department with a certificate of completion from an approved firearms safety training program, two sets of fingerprints and a reasonable fee determined by the director of the department.

- G. On receipt of a concealed weapon permit application, the department of public safety shall conduct a check of the applicant's criminal history record pursuant to section 41-1750. The department of public safety may exchange fingerprint card information with the federal bureau of investigation for federal criminal history record checks.
- H. The department of public safety shall complete all of the required qualification checks within sixty days after receipt of the application and shall issue a permit within fifteen working days after completing the qualification checks if the applicant meets all of the conditions specified in subsection E of this section. If a permit is denied, the department of public safety shall notify the applicant in writing within fifteen working days after the completion of all of the required qualification checks and shall state the reasons why the application was denied. On receipt of the notification of the denial, the applicant has twenty days to submit any additional documentation to the department. On receipt of the additional documentation, the department shall reconsider its decision and inform the applicant within twenty days of the result of the reconsideration. If denied, the applicant shall be informed that the applicant may request a hearing pursuant to title 41, chapter 6, article 10.
- I. On issuance, a permit is valid for five years, except a permit that is held by a member of the United States armed forces, including a member of the Arizona national guard or a member of the reserves of any military establishment of the United States, who is on federal active duty and who is deployed overseas shall be extended until ninety days after the end of the member's overseas deployment.
- J. The department of public safety shall maintain a computerized permit record system that is accessible to criminal justice agencies for the purpose of confirming the permit status of any person who claims to hold a valid permit issued by this state. This information and any other records that are maintained regarding applicants, permit holders or instructors shall not be available to any other person or entity except on an order from a state or federal court.
- K. Notwithstanding subsection J of this section, it is a defense to any charge for carrying a deadly weapon without a permit by a member of the United States armed forces, including a member of the Arizona national guard or a member of the reserves of any military establishment of the United States, if the member was on federal active duty at the time the permit expired and the member presents documentation indicating release from active duty or reassignment from overseas deployment within the preceding ninety days.
- L. A permit issued pursuant to this section is renewable every five years. Before a permit may be renewed, a criminal history records check

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shall be conducted pursuant to section 41-1750 within sixty days after receipt of the application for renewal. For the purposes of permit renewal, the permit holder is not required to submit additional fingerprints.

- M. Applications for renewal shall be accompanied by a fee determined by the director of the department of public safety.
- N. The department of public safety shall suspend or revoke a permit issued under this section if the permit holder becomes ineligible pursuant to subsection E of this section. The department of public safety shall notify the permit holder in writing within fifteen working days after the revocation or suspension and shall state the reasons for the revocation or suspension.
- O. An organization shall apply to the department of public safety for approval of its firearms safety training program. The department shall approve a program that meets the following requirements:
  - 1. Is at least eight hours in length.
  - 2. Is conducted on a pass or fail basis.
- 3. Addresses all of the following topics in a format approved by the director of the department:
  - (a) Legal issues relating to the use of deadly force.
  - (b) Weapon care and maintenance.
  - (c) Mental conditioning for the use of deadly force.
  - (d) Safe handling and storage of weapons.
  - (e) Marksmanship.
  - (f) Judgmental shooting.
- 4. Is conducted by instructors who submit to a background investigation, including a check for warrants and a criminal history records check.
- P. If approved pursuant to subsection 0 of this section, the organization shall submit to the department of public safety two sets of fingerprints from each instructor and a fee to be determined by the director of the department of public safety. On receipt of the fingerprints and fee, the department of public safety shall conduct a check of each instructor's criminal history record pursuant to section 41-1750. The department of public safety may exchange this fingerprint card information with the federal bureau of investigation for federal criminal history record checks.
- Q. The proprietary interest of all approved instructors and programs shall be safeguarded, and the contents of any training program shall not be disclosed to any person or entity other than a bona fide criminal justice agency, except on an order from a state or federal court.
- R. If the department of public safety rejects a program, the rejected organization may request a hearing pursuant to title 41, chapter 6, article 10.
- S. The department of public safety shall maintain information comparing the number of permits requested, the number of permits issued and the number of permits denied. The department shall annually report this information to the governor and the legislature.

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- T. The director of the department of public safety shall adopt rules for the purpose of implementing and administering the concealed weapons permit program including fees relating to permits and certificates that are issued pursuant to this section.
- U. This state and any political subdivision of this state shall recognize a concealed weapon, firearm or handgun permit or license that is issued by another state or a political subdivision of another state if both:
  - 1. The permit or license is recognized as valid in the issuing state.
  - 2. The permit or license holder is all of the following:
  - (a) Not a resident of this state.
  - (b) Legally present in this state.
  - (c) Not legally prohibited from possessing a firearm in this state.
- V. For the purpose of establishing mutual permit or license recognition with other states, the department of public safety shall enter into a written agreement if another state requires a written agreement.
- W. Notwithstanding the provisions of this section, a person with a concealed weapons permit from another state may not carry a concealed weapon in this state if the person is under twenty-one years of age or is under indictment for, or has been convicted of, a felony offense in any jurisdiction, unless the person's rights have been restored and the conviction is expunged, set aside or vacated and the applicant PERSON is currently not a prohibited possessor under state or federal law.
- X. The department of public safety may issue certificates of firearms proficiency according to the Arizona peace officer standards and training board firearms qualification for the purposes of implementing the law enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B and 926C). A law enforcement agency shall issue to a law enforcement officer who has honorably retired a photographic identification that states that the officer has honorably retired from the agency. The chief law enforcement officer shall determine whether an officer has honorably retired and the determination is not subject to review. A law enforcement agency has no obligation to revoke, alter or modify the honorable discharge photographic identification based on conduct that the agency becomes aware of or that occurs after the officer has separated from the agency.

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HOUSE FINAL PASSAGE as per Joint Conference	SENATE FINAL PASSAGE as per Joint Conference
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